# In the Supreme Court of the United States

OCTOBER TERM, 1944

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No. 727

CHARLES C. ORIOLO, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT*

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## MEMORANDUM FOR THE UNITED STATES

On April 12, 1943, petitioner was convicted in the United States District Court for the Eastern District of Pennsylvania on an indictment charging that he transported one Elizabeth George from Atlantic City, N. J., to Philadelphia, Pa., for the purpose of prostitution and debauchery, in violation of the Mann Act (18 U. S. C. 398, 399). He was sentenced to imprisonment for a term of three years. (App. 5a–10a, 11a.)[1] The evidence is

[1] The record filed with the petition for a writ of certiorari consists of the appendix to petitioner's brief in the circuit court of appeals, and for convenience we shall use the designation "App." in referring to this document.



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summarized in an agreed statement of facts upon which the appeal was heard and decided by the Circuit Court of Appeals for the Third Circuit, as follows (App. 2a):

> The testimony was to the effect that the defendant and one Elizabeth George, who testified on behalf of the Government, met in Philadelphia and that, after some preliminaries, defendant took the woman to the Clinton Hotel in Philadelphia, where he registered with her as man and wife under the name of De Marco on July 6, 1942. The woman worked for defendant as a prostitute. On July 19, 1942, the couple undertook an automobile journey to Atlantic City for a day's outing. There they were arrested, and their automobile was held by the authorities. The couple took the train back to Philadelphia on July 20, 1942, and within about fifteen minutes from the time the return journey on the train commenced, and while the train was still in the State of New Jersey, defendant informed the woman that she would have to resume the business of prostitution in Philadelphia to enable him to pay the $500.00 fine that had been imposed at Atlantic City. Upon their arrival into Philadelphia, the woman worked for the defendant as a prostitute and turned over her earnings to him.

After the case had been argued in the circuit court of appeals, but before it was decided (see

App. 13–14), this Court rendered its opinion in *Mortensen* v. *United States*, 322 U. S. 369. Thereafter the court below filed its decision affirming the judgment of the district court; one judge dissented (App. 14–18, 19). The sole question with which the court dealt was whether this case is distinguishable from the *Mortensen* case. The majority opinion by District Judge Bard, and concurred in by Circuit Judge Jones, found the following distinction (App. 17):

> There is one significant fact which, in our opinion, distinguishes the present case from the *Mortensen* case and presents sufficient evidence to sustain the conviction. That evidence consists of the fact that defendant was arrested and fined in New Jersey and his statement to the woman that she would have to return to Philadelphia and resume the business of prostitution to enable him to pay the fine. As will be noted from the excerpt from the majority opinion of the Supreme Court above quoted, much stress was laid on the fact that: "The sole purpose of the journey from beginning to end was to provide innocent recreation and a holiday for petitioners and the two girls. * * * There is no evidence of any change in the purpose of the trip during its course. If innocent when it began it remained so until it ended."
>
> In the case at bar there was evidence of a change in the purpose of the trip during

> its course. The seizure of defendant's automobile and the fine imposed upon him supply the motive for the formation of a new intent on his part in transporting the woman to Pennsylvania and his statement to her as to this intent was sufficient to demonstrate that a change had occurred in the purpose of the trip to Philadelphia which distinguished it from being merely the return of the vacation trip.

Circuit Judge Biggs, dissenting, concluded (App. 18) that

> When the defendant took the woman on a day's outing to Atlantic City he intended to transport her at the end of the day from Atlantic City to Philadelphia so that she might resume work as a prostitute for his pecuniary profit. The change in purpose, and hence in intent, on which the majority rely, rests on the insubstantial difference between transporting the woman to Philadelphia to earn money to aid the defendant to recover his car as distinguished from transporting her (as he had intended originally) to earn money for him. If there be evidence of a change in purpose the change is too trivial to support the defendant's conviction in the light of *Mortensen* v. *United States,* 322 U. S. 369.

The sole ground urged by petitioner in his petition for a writ of certiorari (Pet. 8–11) is that the circuit court of appeals was mistaken in deciding that this case is distinguishable from the

*Mortensen* case. The issue is fully presented by the majority and dissenting opinions in the court below.

We respectfully suggest that the case be disposed of in this Court without further briefs or argument. If the Court feels that the distinction relied upon by the majority below is sound, as we think it is, it would seem that the case may be adequately disposed of by a denial of the petition for a writ of certiorari. On the other hand, if the Court should be of the view that the case is indistinguishable from the *Mortensen* case, it is respectfully suggested that an appropriate disposition would be to grant the writ and reverse the judgment below without additional briefs or argument. Cf. *Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees et al.* v. *United Transport Service Employees et al.*, 320 U. S. 715.

Respectfully submitted,

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